

REMARKS

This is responsive to the Office Action mailed on October 16, 2007. The Office Action rejected claims 1, 2, 6-8, 13-16, 20 and 21 and objected to claims 5, 10, 11, 18, 22 and 23. Applicant has amended claims 1, 7, 15 and 20 and canceled claims 2, 8, 16 and 24. The application currently includes claims 1, 5-7, 10, 11, 13-15, 18 and 20-23.

The Office Action rejected independent claims 1, 7, 15 and 20 as being anticipated under 35 USC § 102(b) by the Dobrovolny et al. U.S. Patent No. 6,042,541 (herein after the Dobrovolny patent). The Office Action alleges that the Dobrovolny patent discloses a rod 102, a housing/receiving unit 104 or a clamping mechanism 108 having a bore/socket, a force providing/actuating mechanism 110 and a handle 118. With respect to dependent claims 2, 8, 16 and 24, the Office Action rejected these claims as being unpatentable over the Dobrovolny patent in view of Tashiro U.S. Patent No. 4,599,011. The Office Action alleges that the Dobrovolny patent discloses all of the limitations of the claimed invention except for a rotatable wedge. The Office Action alleges that the Tashiro patent discloses a clamp housing 21 having an internal cavity (through the center), a force providing/actuating mechanism 11 having a rotatable wedge 14 and a surgical rod member 2. The Office Action alleges that it would have been obvious to one having ordinary skill in the art to have modified the clamp in the Dobrovolny patent to have the clamp housing and force providing/actuating mechanism taught by the Tashiro patent for the purpose of providing a better means of attaching the members together.

Applicant has amended independent claims 1, 7, 15 and 20 to claim that the force providing mechanism in claim 1 comprises a rotatable wedge, the actuating mechanism in claim 7 comprises a rotatable wedge, the force providing mechanism in claim 15 comprises a rotatable wedge and the clamping mechanism in claim 20 comprises a rotatable wedge. Applicant has canceled claims 2, 8, 16 and 24. Applicant submits that claims 1, 7, 15 and 20 are patentable over the cited prior art, including the combination of the Dobrovolny patent in view of the Tashiro patent.

The Dobrovolny patent discloses utilizing a camming mechanism to secure a cylindrical rod in place. There is no teaching or suggestion in the Dobrovolny patent of utilizing a rotatable wedge.

With respect to the Tashiro patent, the Tashiro patent is not analogous art and cannot be utilized to allege that independent claims 1, 7, 15 and 20 would be obvious. Each of these independent claims relates to an apparatus or clamp that is utilized in a surgical field. In contrast, the Tashiro patent relates to a joint for assembling a piece of furniture. See Col. 1, lines 6-7.

One skilled in the surgical device art would not look to an article-joining device for a piece of furniture to aid in inventing the claimed device. Therefore, the Tashiro patent is not analogous art and cannot be utilized to allege that a surgical device is obvious. See MPEP 2141.01(a) (I) and (IV). See for example *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992) (Applicant claimed an improvement in a hose clamp which differed from the prior art in the presence of a preassembly “hook” which maintained the preassembly condition of the clamp and disengaged automatically when the clamp was tightened. The Board relied upon a reference which disclosed a hook and eye fastener for use in garments, reasoning that all hooking problems are analogous. The court held the reference was not within the field of applicant’s endeavor, and was not reasonably pertinent to the particular problem with which the inventor was concerned because it had not been shown that a person of ordinary skill, seeking to solve a problem of fastening a hose clamp, would reasonably be expected or motivated to look to fasteners for garments. The Commissioner further argued in the brief on appeal that a disengagable catch is a common everyday mechanical concept, however the court held that the Commissioner did not explain why a “catch” of unstated structure is such a concept, and why it would have made the claimed invention obvious). Just as a hook for a garment is not analogous art to a hose clamp, a joint for securing two pieces of furniture together is not analogous art to a surgical clamp for retaining surgical equipment in selected positions.

As such, independent claims 1, 7, 15 and 20 are believed to be in allowable form. Reconsideration and allowance of claims 1, 7, 15 and 20 are respectfully requested.

The Office Action also rejected claims 6, 13, 14 and 21 as being anticipated by the Dobrovolny patent and objected to claims 5, 10, 11, 18, 22 and 23. While Applicant does not acquiesce to the rejections of the dependent claims, Applicant submits that the rejections are moot in light of the fact that independent claims 1, 7, 15 and 20 are in allowable form. Reconsideration and allowance of claims 5, 6, 10, 11, 13, 14, 18, and 21-23 are respectfully requested.

For the foregoing reasons, Applicant respectfully submits that the present application is in allowable form. Reconsideration and allowance of the present application are respectfully requested.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

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